

REMARKS

This responds to the Office Action mailed on December 27, 2007.

Claims 1, 8, 15, 20, and 25 are amended; as a result, claims 1-28 are now pending in this application.

Applicant believes that the amendments do not necessitate any new searching on the part of the Examiner and that the amendments are made for purposes of allowance. Accordingly, Applicant respectfully requests that the amendments be entered.

Example support for the amendments may be found throughout the original file specification. By way of example only, the Examiner's attention is directed to the original filed specification paragraphs 16, 28, and 42.

§102 Rejection of the Claims

Claims 1, 5, 6, 14, 15, 18, 19 and 26-28 were rejected under 35 USC § 102(b) as being anticipated by Smith et al. (U.S. 6,311,324). It is of course fundamental that in order to sustain an anticipation rejection that each and every limitation in the claims must be taught or suggested in the identical detail and exact arrangement as the reference cited.

Here, Smith fails to teach or suggest any inspection of a processor counter for a total number of polygons presently be rendered by an executing graphic's application. Accordingly, Applicant respectfully submits that Smith can not be said to anticipate independent claims 1 and 15.

Applicant also notes that it is impossible for claim 14 to be anticipated by the Smith reference and impossible for claims 26-28 to be anticipated by the Smith reference. This is so, because these are dependent claims from independent claims that the Examiner has rejected on the bases of obviousness. By definition all dependent claims include all the limitations of the independent claim from which they depend. Therefore, because independent claims 8 and 25 are not being rejected on the bases of anticipation in view of Smith, the claims 14 and 26-28 cannot be anticipated by Smith. Applicant respectfully requests correction by the Examiner for the record. Also, technically there is no rejection of claim 14 and 26-28 since such a rejection is impossible. As such, Applicant respectfully requests that at the very least a proper rejection for

the record be made for these claims if one exists at all and that the Applicant be given ample notice and opportunity to respond to the same; meaning that another action is appropriate that is not an Advisory in this matter to properly for the record address claims 14 and 26-28.

§103 Rejection of the Claims

Claims 2-4, 7, 11, 12, 16, 17 and 21-25 were rejected under 35 USC § 103(a) as being unpatentable over Smith et al. in view of Fliflet (U.S. 2002/0140710). To sustain an obviousness rejection each and every limitation in the rejected claims must be taught or suggested in the proposed combination of references.

Claims 2-4, 7, 11-12, and 16-17 are dependent from independent claims that are discussed above and below. The dependent claims are allowable when the independent claims from which they dependent are allowable. Therefore, based on the amendments and remarks presented above and below with respect to independent claims 1, 8, and 15; Applicant respectfully requests that these rejections be withdrawn and the claims noted allowed.

With respect to independent claim 25, neither the Smith nor the Fliflet reference discuss the limitation “wherein the monitor logic inspects as the selective memory contents a processor counter of the processor for a total number of polygons that the graphics application is presently rendering when the processor counter is inspected,” which now appears in amended independent claim 25. Therefore, Applicant respectfully requests that the rejections of record be withdrawn and claim 25 along with its dependents be allowed.

Claims 8-10, 13 and 20 were also rejected under 35 USC § 103(a) as being unpatentable over Smith et al. in view of Greenberg et al. (U.S. 7,171,651). Again, to sustain an obviousness rejection each and every limitation in the rejected claims must be taught or suggested in the proposed combination of references.

With respect to independent claims 8 and 20, neither the Smith nor the Greenberg reference teaches or suggest the following limitation that is now present in independent claims 8 and 20: “wherein the performance data includes polynomials entering rendering when the graphics application is processing.” Accordingly, Applicant respectfully requests that the

rejections of independent claims 8 and 20 be withdrawn and these claims allowed along with their independent claims.

RESERVATION OF RIGHTS

In the interest of clarity and brevity, Applicant may not have addressed every assertion made in the Office Action. Applicant's silence regarding any such assertion does not constitute any admission or acquiescence. Applicant reserves all rights not exercised in connection with this response, such as the right to challenge or rebut any tacit or explicit characterization of any reference or of any of the present claims, the right to challenge or rebut any asserted factual or legal basis of any of the rejections, the right to swear behind any cited reference such as provided under 37 C.F.R. § 1.131 or otherwise, or the right to assert co-ownership of any cited reference. Applicant does not admit that any of the cited references or any other references of record is relevant to the present claims, or that they constitute prior art. To the extent that any rejection or assertion is based upon the Examiner's personal knowledge, rather than any objective evidence of record as manifested by a cited prior art reference, Applicant timely objects to such reliance on Official Notice, and reserves all rights to request that the Examiner provide a reference or affidavit in support of such assertion, as required by MPEP § 2144.03. Applicant reserves all rights to pursue any cancelled claims in a subsequent patent application claiming the benefit of priority of the present patent application, and to request rejoinder of any withdrawn claim, as required by MPEP § 821.04.

CONCLUSION

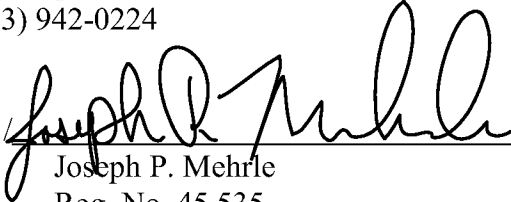
Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (513) 942-0224 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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By  /
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